

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Number EB-02-AT-316
	)	
Marshall County Radio Corp.	)	NAL/Acct. No. 200332480002
Licensee of AM Radio Station WAXO	)	
Lewisburg, Tennessee	)	FRN 0003-7254-88
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Released: October 16, 2002**

By the Enforcement Bureau, Atlanta Office:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Marshall County Radio Corp., licensee of AM radio station WAXO, Lewisburg, Tennessee, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 73.49 of the Commission’s Rules (“Rules”).<sup>1</sup> Specifically, we find Marshall County Radio Corp. apparently liable for failing to enclose its antenna tower within an effective locked fence or other enclosure.

**II. BACKGROUND**

2. On August 8, 2002, an agent from the FCC Enforcement Bureau’s Atlanta Field Office inspected the antenna tower of radio station WAXO(AM), Lewisburg, Tennessee. The agent observed that the gate around the antenna tower was not locked. The antenna tower had radio frequency potential at the base.

3. On October 1, 2002, the agent telephoned station WAXO to speak with Marshall County Radio Corp.’s President and General Manager Bob Smartt. Mr. Smartt was not in, and the agent left a message regarding the unlocked base fencing. On October 2, 2002, Mr. Smartt returned the agent’s call and stated that he had been aware of the unlocked fence but had not taken action to secure the fence until after the agent’s October 1, 2002, telephone call.

**III. DISCUSSION**

3. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the

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<sup>1</sup> 47 C.F.R. § 73.49.

base be enclosed within effective locked fences or other enclosures. From August 8, 2002, until October 1, 2002, WAXO's antenna tower was not enclosed within an effective locked fence or other enclosure.

4. Based on the evidence before us, we find that Marshall County Radio Corp. willfully<sup>2</sup> and repeatedly<sup>3</sup> violated Section 73.49 of the Rules by failing to provide an effective locked fence or other enclosure around its antenna tower.

5. Pursuant to Section 1.80(b)(4) of the Rules, the base forfeiture amount for AM tower fencing violations is \$7,000.<sup>4</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended ("Act"), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>5</sup> Considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

#### IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,<sup>6</sup> and Sections 0.111, 0.311 and 1.80 of the Rules,<sup>7</sup> Marshall County Radio Corp., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful and repeated violation of Section 73.49 of the Rules by failing to provide an effective locked fence for its antenna tower.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *NAL*, Marshall County Radio Corp. SHALL PAY the full amount of the

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<sup>2</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>3</sup> The term "repeated," when used with reference to the commission or omission of any act, "means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4).

<sup>5</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. §§ 0.111, 0.311, 1.80.

proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Request for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554.<sup>8</sup>

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12<sup>th</sup> Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division, and MUST INCLUDE THE NAL/Acct. No. referenced above.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this *NAL*, either in your response to the *NAL* or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this *Notice of Apparent Liability*. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

12. IT IS FURTHER ORDERED THAT a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Marshall County Radio Corp., 217 W. Commerce St., Lewisburg, Tennessee 37091.

FEDERAL COMMUNICATIONS COMMISSION

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<sup>8</sup> See 47 C.F.R. § 1.1914.

Fred L. Broce  
District Director, Atlanta Office  
Enforcement Bureau

Attachment.